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POLES AND WIRES IN THE STREETS FOR THE ELECTRIC RAILWAY.

NOT without challenge have all the appliances of the witches' "broomstick train" been set up in so many of our cities during the past few years. It is not the return of the witches, however, that troubles the practical people of this present time, but rather the setting up of a row of innocent poles in the streets and stretching a wire overhead charged with the electric current. It is not "the black cat's purr as the train goes by," nor even the gleam of the old hag's wicked eye, but rather the obstruction of travel by the poles, or the effect of the current in the wire on conversation by telephone, that leads to applications for injunction against the use of the electric railway.

Whatever the reason, it is true that the new mode of propelling street cars has given the courts a new subject for discussion and has produced, already, a whole line of legal decisions of greater or less authority. It seems likely that the witches have come to stay, and that they will soon infest the whole country, and it may be interesting to see how the courts are dealing with them again after a rest of "a couple of hundred years or so." It is quite safe to say that the courts will not attempt to meddle again with the witches themselves; but, without stopping to inquire whether Dr. Holmes has told us truly "where was the motor that made it go," the courts will deal rather with the questions by what right these poles and wires are put up in the streets,

whether these new appliances are an additional burden on the land, and whether this powerful current shall be allowed to interfere with our conversations over the telephone.

It may be interesting to refer to some of the recent decisions on these three questions, and, as many of the cases are not yet reported, an account of them may prove useful to persons engaged in the controversy on either side.

(1.) The question by what authority such use may be made of the public streets is not new, and is governed entirely by decisions relating to similar uses of the streets. It is only necessary, therefore, to allude to the general rules on the subject, and to refer to the text-books where the matter is discussed.

It is well settled that the use of the streets belongs to the public at large as distinguished from the municipality, that the Legislature represents the public, and that the municipality has no control over the streets except what is given to it by the Legislature, either expressly or by implication.[1]

The Legislature has (in the absence of constitutional restraint, and subject to the property rights and easements of the abutting owner) full and paramount authority over all public ways and public places.[2]

From this it follows that

The authority of municipalities over streets and the uses to which they may be put depends entirely upon their charters or the legislative enactments applicable to them.[3]

The public easement in the highways is vested in the public, and can be divested by nothing short of an exercise of sovereign power. The Legislature, representing the public, may release the public right by vacating the highway, may modify the public use by granting a right to use the highway for a horse railroad, or may restrict the public use by granting a right to erect poles and other obstructions in the highway. What the Legislature can thus do, it may delegate authority to do. . . . No reason appears why all such authority possessed by the Legislature may not be thus delegated. But the delegation of such power must plainly appear either by express grant or by necessary implication.[4]

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[1] State, Hoboken Land Imp. Co., pros., *v.* Hoboken, 35 N. J. L. 208.

[2] 2 Dill. Mun. Corp., 4th ed., § 656 (518), and cases cited.

[3] 2 Dill. Mun. Corp., § 680 (538).

[4] Per Magie, J., in Domestic Tel & Teleph. Co. *v.* Newark, 49 N. J. L. 344-346 (1887).

City charters usually confer upon the municipal government general power to control and improve the streets, and under this power it has been held that cities may authorize them to be used for many purposes of public convenience other than travel or transportation. They may do all acts appropriate and incidental to the beneficial use of the streets by the public not inconsistent with the free use of them for travel. They may cut down trees, may change the grade, and may lay down sewers and drains.[1] They may construct a public cistern,[2] although this is not undisputed.[3] They may provide for lighting the city, and for this purpose may put up lamp-posts; and it has been held that for this purpose they may contract with others to supply the city with gas, and use the streets to do so.[4] The laying of water-pipes rests upon the same principle;[5] but in England the right to lay down gas-pipes in the highways can only be conferred by legislative authority;[6] and the same is true in America of country highways.[7] The authority must be purely incidental to and in furtherance of the right to control the streets.[8]

But in none of these cases can a municipality grant an exclusive franchise or permanent privilege, and it is because many of these grants are to a certain extent exclusive that special legislative authority is required to give full effect to them.[9]

The right to operate an ordinary steam railroad in the streets cannot be granted by the city;[10] and it is generally held that a telegraph or telephone line imposes a new burden, and cannot be authorized by the municipality alone.[11] With respect to horse

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[1] 2 Dill. Mun. Corp., 4th ed., § 689 (542); Traphagen *v.* Jersey City, 29 N. J. 206, 446; Michener *v.* Philadelphia, 18 Pa. St. 535; McKevitt *v.* Hoboken, 45 N. J. L. 482.

[2] West *v.* Bancroft, 32 Vt. 367.

[3] Dubuque *v.* Maloney, 9 Iowa, 450.

[4] State *v.* Cinc. Gas Light & C. Co., 18 Ohio St. 262 (1868); Indianapolis *v.* Indianapolis Gas Light Co., 66 Ind. 396; 2 Dill. Mun. Corp., § 692 (547).

[5] 2 Dill. Mun. Corp., § 697 (551).

[6] Queen *v.* Charlesworth, 16 Q. B. 1012.

[7] Bloomfield & R. N. Gas C. Co. *v.* Calkins, 62 N. Y. 386; Sterling's Appeal, 111 Pa. St. 35.

[8] Richmond Co. Gas Light Co. *v.* Middletown, 59 N. Y. 228; Dodge *v.* Davenport, 57 Iowa, 560.

[9] See Dill. Mun. Corp., § 691 (546), note; § 693 (547), § 694 (549), and cases cited.

[10] 2 Dill. Mun. Corp., § 705 (558).

[11] State, Domestic Teleg. & Teleph. Co., pros., *v.* Newark, 49 N. J. L. 344; Dill. Mun. Corp., § 698 (552), and note.

railroads there is some difference of opinion. Judge Dillon says (sects. 717 and 725) that the power must come from the Legislature, but that the ordinary powers are often ample enough to authorize cities to allow the streets to be used for local travel by means of such railroads, but they cannot confer corporate franchises nor authorize taking of tolls. It was decided in New York, in 1856, that an exclusive right could not be thus granted; but on the question whether the municipality might, by a mere license, revocable at pleasure, authorize persons to build such a railroad the judges were divided.[1] The New Jersey Supreme Court said, in 1872, that the power had never been exercised in that State under a mere grant of power to regulate streets, and that the attempt to assert it would doubtless provoke the most determined resistance.[2]

It is certainly true that the right to operate a horse railway is a privilege giving the cars the preference in the right of way over other vehicles, so that a line of omnibuses, for example, will not be allowed to run regularly upon the tracks to the injury of the business;[3] and although it is well settled that horse railroads are a legitimate use of the streets for public travel, it is usually considered necessary to have special legislative authority to operate a line with all the privileges which are generally required.

Whether an electric railway stands on the same footing with a horse railway, or is rather to be classed with a steam railway, depends on the question whether it is a new use of the street for a different purpose, and imposes a new burden on the land, and these questions will be discussed with reference to the right of the adjoining owner to compensation; but before coming to that it may be said that whether or not the municipality has a right to authorize a change of motive-power, it is certain that the Legislature has such right, and also that if the electric railway is, in fact, a street railway, the Legislature may confer power to use electricity under a general grant of power to operate and maintain a street

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[1] Davis *v.* New York, 14 N. Y. 506.

[2] State, Montgomery, pros., *v.* Trenton, 36 N. J. L. 79-83. See also Atty. Gen. *v.* Metrop. R.R. Co., 125 Mass. 515; Stanley *v.* Davenport, 54 Iowa, 463; Hinchman *v.* Paterson Horse R.R. Co., 17 N. J. Eq. 75; Jersey City & Bergen R. Co. *v.* Jersey City & Hoboken Horse R.R. Co., 20 N. J. Eq. 61; Sixth Ave. R.R. Co. *v.* Kerr, 45 Barb. 138; Galbreath *v.* Armour, 4 Bell, App. Cas. 374; Boston *v.* Richardson, 13 Allen, 146; Sears *v.* Marshalltown St. R'y Co., 65 Iowa, 742; Redfield on Railways, 3d ed., p. 317.

[3] Camden Horse R.R. Co. *v.* Citizens' Coach Co., 31 N. J. Eq. 525.

railway, provided only that the use of the new power does not so change the character of the railroad as to abuse the privilege of the use of the streets and create a public nuisance. This was held in a recent and well-considered case in New Jersey.[1] The company was organized under a general law for the formation of companies to operate street railways for the transportation of passengers; no special motive-power was mentioned. Vice-Chancellor Van Fleet, referring to this fact, said: —

> Hence under the general grant of power to maintain and operate a street railway, it would seem to be clear that a corporation organized under this statute takes, by necessary and unavoidable implication, a right to use any force in the propulsion of its cars that may be fit and appropriate to that end, which does not prevent that part of the public which desires to use the streets according to other customary methods from having the free and safe use thereof.

And it was held that the company was entitled to use electricity conveyed by overhead wires. There was, in fact, another statute distinctly authorizing the use of electric motors, with the consent of the city, which had been given; but the Vice-Chancellor said that even without this the general grant was sufficient, if it appeared that electricity could be used without preventing the free and safe use of the street by other means of transportation.

(2.) Supposing a franchise to have been obtained from the proper authority for the use of electricity, and to place poles and wires in the streets to carry this current, the question remains, whether this is such a new use of the streets as to impose a new burden upon the lands and to involve the payment of compensation to the abutting owners.

Judge Dillon, in the last edition of his book on Municipal Corporations (2 Dillon, Mun. Corp., § 734 *c*, note), refers to a recent case in Rhode Island, decided while his book was in press, in which it was held that the erection of poles in the streets, with wires for the purpose of propelling street cars by electricity, did not entitle the owner to compensation.[2] The company had authority from the Legislature to use steam, horse, or other power, as the City Council might from time to time direct; and the Council had given permission to use electricity, with poles and wires. On an applica-

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[1] Halsey *v.* Rapid Transit Ry. Co , Dec. 6, 1890, 20 Atl. Rep. 859.

[2] Taggart *v.* Newport Street Railway Co., Jan. 25, 1890, 19 Atl. Rep. 326.

tion by an owner of abutting land for injunction, the Supreme Court held that, since there was no change in the mode of using the streets, but only in the motive-power, there was no additional servitude. The court distinguished this case from those relating to telegraph and telephone wires, by saying that these are not used to facilitate the use of the streets for travel and transportation, "whereas the poles and wires of the railroad company are directly ancillary to the uses of the street as such, in that they communicate the power by which the cars are propelled." Judge Dillon throws discredit upon this decision by saying, "The distinction last mentioned is so fine as to be almost impalpable, and it suggests serious doubts whether both conclusions are sound and reconcilable. The general subject awaits further development and settlement."

This remark was made less than a year ago, and the subject is already being rapidly developed, and must soon reach a settlement. The law must follow close upon the progress of inventions, and the application of electricity to street railroads is being made so quickly and so generally that the conclusions of the law in regard to the use of the new power cannot be long delayed.

It is, of course, too soon yet to attempt in an article in a magazine to say how the questions will be settled by the general concurrence of decisions or by the weight of authority, but we may consider some of the principles involved in the discussion, and refer to the cases which have been decided in various courts since this remark of Judge Dillon's upon the case determined in Rhode Island last February.

It is hard to tell whether Judge Dillon means to suggest that the courts were mistaken in holding that the telegraph and the telephone do not come within the natural and proper uses of the street, or whether he thinks that it is going too far to allow the electric railway. It may well be that the distinction between the telegraph and the railway is not sound, and yet that the railway is a proper use of the street. Whether both are to be included in the same class depends a good deal on the breadth of the view that is taken of the proper uses of a street. If these are confined to travel and transportation, then the railway may be included, while the telegraph is left out; but if the use of the street is to provide for communication, then it would seem to be just as well to send messages along it upon wires arranged for the purpose, as to send them on by men on horseback, or in heavy

wagons carrying the mails. It has been held in Massachusetts and Missouri that the telegraph is not a new burden upon the streets;[1] and in the numerous cases in which it is held otherwise it was so held upon the ground that the telegraph and telephone are not used to facilitate public travel, and that if they do transmit intelligence, they do so by a method so different from the ordinary use of the streets as not to come within the public easement.[2]

In Virginia the Court of Appeals has recently decided that the right acquired by the public in the condemnation of a highway is only the right of the public to pass along it, and that the untaken parts, being private property, cannot be occupied by telegraph poles without compensation.[3]

In New Jersey the decisions rest partly on a statute providing for compensation.[4] On the whole it is safe to say that these decisions against the use of the streets for the telephone and telegraph are not sufficient to determine the question of the use of the streets by the electric railway, and whether the distinction drawn in the Rhode Island case is sound or not, the question of the use of the electric railway must be decided by itself.

The question is, whether the poles and wires and the street railway operated by electricity constitute a new burden upon land. It is a street railway operated by a new motive-power and with new appliances, but for the same purposes as a horse railway. It is important, therefore, to see whether a horse railway is considered an additional burden, and, if not, whether the electric railway has the same characteristics as those which make the horse railway a proper use of the street, or is to be classed rather with the ordinary steam railroad which has been held to impose an additional servitude.

There is a very general agreement of authorities, with some difference of opinion in New York, that the use of a street for a horse railroad is a legitimate use of it for public travel consistent with the purposes for which it was laid out, and does not impose a new burden upon the land. In New York a distinction is made

[1] Pierce *v.* Drew, 136 Mass. 75. Julia Building Assoc. *v.* Bell Teleph. Co., 88 Mo., 258.

[2] Dill Mun. Corp., § 698–698 a., note citing cases. Lewis Em. Dom., secs. 131, 226 and cases. Halsey *v.* Rapid Transit R'y Co., 20 Atl. Rep. 859–864 per Van Fleet, V. C.

[3] Western Union Tel. Co. *v.* Williams, Mar. 27, 1890, 11 S. W. Rep. 106.

[4] Broome *v.* N. Y. & N. J. Teleph. Co., 42 N. J. Eq. 141; Roake *v.* Am. Teleph. Co. 41 N. J. Eq. 35

between cases in which the fee of the street is in the abutter and those in which the fee is in the city; but this distinction is not generally approved, and it seems to be accepted that in either case a horse railroad authorized by statute is not inconsistent with the rightful uses of a street.[1] Mr. Lewis, in his recent work on Eminent Domain, says: —

> It has been determined in numerous decisions, and without dissent, except in New York, that the use of the street by a horse railroad constructed and operated in the ordinary manner falls within the purpose for which streets are established, and, consequently, that for any damage resulting from such use to the abutting owner he can recover no compensation, whether the fee is in the public or not.[2]

Mr. Lewis, however, goes on to say that in his own opinion, although the difference between the ordinary horse railway and the ordinary steam railway is obvious, yet the difference is only one of degree. The essential characteristic of both roads is that an exclusive franchise is granted in the soil of the street, and that if the principle of the horse railroad cases is sound, then a street may be so filled with tracks as practically to exclude all other travel and traffic from the streets.[3] The law, however, is settled by the great weight of authority that the street railway is not in itself an additional burden, and the proviso is that it shall leave the landowner free right of use and of access to his land. Judge Cooley, in his work on Constitutional Limitations (sect. 688), says: —

> When land is dedicated for a street, it is unquestionably appropriated for all the ordinary purposes of a street, not merely for the purposes for which such streets were formerly applied, but those demanded by new improvements and new wants. Among these purposes is the use of heavy carriages which run upon a grooved track; and the appropriation of important streets in large cities for their use is not only a frequent necessity which must be supposed to have been contemplated, but it is almost as much a matter of course as the grading and paving.

Judge Dillon and Mr. Mills reach the same conclusion.[4]

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[1] Hussner *v.* Brooklyn City R.R. Co., 114 N. Y. 433, 11 Am. St. Rep. 679.

[2] Lewis, Em. Dom., sect. 124.

[3] See also the dissenting opinion of Earl, J., in Story *v.* N. Y. El. R.R. Co., 90 N. Y. 179–189.

[4] Mills on Em. Dom., sect. 205; 2 Dill. Mun. Corp., § 722. But if a street railway is laid along the margin of the sidewalk so as to disturb the grade, and so as to be in fact

It is equally well settled that the ordinary steam railroad, as now conducted, is not within the purposes for which a street is dedicated, and does impose an additional burden upon the abutting owner.[1]

The same cases which allow the horse railroad to be within the proper uses of a street declare that the steam railroad is not.[2] The reason for the distinction is not the motive-power, but the mode of using the streets, the purpose for which the cars are used, and the effect of using them upon the other and ordinary uses of the streets, and upon the use of the adjoining land. Chancellor Green, in Hinchman *v.* Paterson Horse R.R. Co.,[3] said the use of land for a steam railway and the use of it for an ordinary highway were almost wholly inconsistent with each other, but with respect to the street railroads used as a part of the highway and in connection with it, he said the use of the land is almost identical with that of the ordinary highway, and went on to show that the use of the railroad could not interfere with the land-owner in the use of his property any more than an ordinary highway.

Chancellor Zabriskie, in Jersey City & Bergen R. Co. *v.* Jersey City & Hoboken Horse R. Co.,[4] referred to this and many other cases distinguishing street railroads from the ordinary railroads operated by steam. He said that steam railroads did not afford

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an obstruction to the convenient access to the complainant's house, compensation must be paid. Street Railway *v.* Cumminsville, 14 Ohio St. 524; Railway Co. *v.* Lawrence, 38 Ohio St. 41. In Mississippi it has recently been held that a horse railroad is a new burden and entitles the abutter to compensation. Theobold *v.* Louisville, etc., R'y Co., 66 Miss. 279, 14 Am. State Rep. 564, Apr., 1889. For cases on horse and steam railways in streets, see notes 14 Am. St. Rep. 569, and 11 Am. St. Rep. 682; 36 Am. and Eng. R. Cas., n. 9; 38 *ibid* 452, n., 468, n.; 4 Sawyer, Rep. Ann. 623, n.; 32 Am. and Eng. R. Cas. 351, n. For an article on the right to construct and operate an elevated steam railroad on the other side of the street, see 27 Am. Law Reg. N. S. 1; and see also Penna. R.R. Co. *v.* Lippincott, 116 Pa. St. 472.

[1] 2 Dill. Mun. Corp., 4th ed., § 722, and cases cited; Lewis on Em. Dom., sect. 636; The People *v.* Kerr, 27 N. Y. 188 (1863); Craig *v.* Rochester City & B. R.R. Co., 39 N. Y. 404 (1868); Kellinger *v.* Forty-Second St., etc., R.R. Co., 50 N. Y. 206; Story *v.* N. Y. El. Ry. Co., 90 N. Y. 122; Lahr *v.* Met. El. Ry. Co., 104 N. Y. 268; Reichert *v.* St. Louis & S. F. R. Co., Arkansas, June, 1889, 5 Lawyer's Rep. Ann., 1883, referring to many cases.

[2] Hinchman *v.* Paterson Horse R.R. Co., 17 N. J. Eq. (2 C. E. G.) 75; Jersey City & Bergen R. Co. *v.* Jersey City & Hoboken Horse R. Co., 20 N. J. Eq. (5 C. E. G.) 61; 2 Dill. Mun. Corp., §§ 725 (576), 722 (573); Hobart *v.* Milwaukie City R.R. Co., 27 Wis. 194 (1870); s. c. 9 Am. Rep. 461; Ford *v.* Chicago & N. W. R.R. Co., 14 Wis. 616; Springfield *v.* Conn. River R.R. Co., 4 Cush. 63.

[3] 17 N. J. Eq. 75.

[4] 20 N. J. Eq. 61.

access to the land along which they pass, and that the land-owner whose land was taken acquired more of the benefits of a public highway to his land from the use of land for such a railroad, but that in the case of street railroads it was different. In general, he said: —

> The cars will stop in front of every door, and convey persons from any one point on their line to any other to which they may desire to go, and the great use or advantage of them is to those whose property is taken for the street and whose lands adjoin it. . . . They are but means of using the public streets to a greater advantage for the very purposes for which they were laid out, free and quick transit from one part to another; they are the best and cheapest mode yet devised, and they do not hinder the use of the rest of the street for public travel, and hardly, and in a very small degree, obstruct travel on the part occupied by the tracks except the few inches used for the iron rails.

And it was held that the State, or those to whom it has delegated the authority, has the right to set apart a certain portion of the street for a street railroad, if that road is to accommodate the public travel for which the street was designed.

It is worthy of note that before it was learned by experience that the use of the steam railroad in the streets was in fact exclusive, and was not consistent with the ordinary uses of a street, it was held in New Jersey that even this was only a new mode of travel to which the streets might be devoted. Chancellor Williamson, in his remarkable judgment in Morris & Essex R.R. Co. *v.* Newark,[1] in 1855, said: —

> While [the land] is preserved as a common public highway, the use of it does not belong to the owner of the fee any more than to any other individual of the community. The Legislature, therefore, does not, by permitting the company to use the public highway in common with the public, take away from the land-owner anything that belongs to him. It is not a misappropriation of the way. It is used in addition to the ordinary mode, in an improved mode for people to pass and repass.

It was only when it was found that the steam railroad running through a town was not a mode of using the streets for travel within the city, that the courts held that it was not a use for which the streets had been dedicated, and that although the right to use

[1] 2 Stock. 352.

it so might be granted, compensation must be given to the land-owner.

Horse railroads having been held to be within the uses of a street, and steam railroads not, the question next arose whether the use of steam motors on street railroads imposed a new burden, and this was variously decided according to the views of the courts upon the effect of such a change upon the use of the streets. In Iowa, for example,[1] it was held that steam motors authorized by a city to be used on the streets were a nuisance, and that the city was liable to a traveller for damages. In Minnesota, on the other hand, it was held[2] that the running of cars drawn by steam motors enclosed in cabs was a proper use of the streets in aid of public travel, and did not impose a new servitude.

The same thing was held in a case in Maine,[3] when the court said: "The motor is not the criterion; it is rather the use of the street. A change of motor is not a change of use."

In Williams *v.* City Electric Railway Co., in the U. S. Circuit Court for the District of Arkansas,[4] it was held that a railroad operated in a city by steam motors was a street railway, within the meaning of a statute giving cities power to provide for the operation of street railways, and that it did not impose a new servitude. The court said: "The distinction attempted to be drawn between animal and mechanical power as applied to street railroads is not sound. The motor is not the criterion. It is the use of the street and the mode of that use;" and that if a railroad, whether operated by horse power or mechanical power, is in fact so operated as to be a nuisance, the land-owner has his remedy.

In Tennessee it has recently been held that the use of a steam motor drawing cars and running along a city street and five miles out into the country was, in fact, a new servitude. The court said that it was a question of degree, and depended on the manner in which the streets were used; but that in this case there was noise and smoke, the trains were longer and heavier, and the speed was greater than in the case of horse cars, and the use was practically inconsistent with other uses of the highway.[5]

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[1] Stanley *v.* Davenport, 54 Iowa, 463.

[2] Newell *v.* Minneapolis, Lyndale, & M. R'y Co., 35 Minn. 112, 59 Am. Rep. 303.

[3] Briggs *v.* Lewiston & A. Horse R.R. Co., 79 Me. 363 (1887).

[4] 41 Fed. Rep. 556, March 26, 1890.

[5] East End R'y Co. *v.* Doyle, 13 S. W. Rep. 936.

In New York the question arose with reference to the use of the cable as the motive-power in a case in which it was one of the conditions of the grant that no steam should be used, and the court held that the franchise did not include the right to excavate and use the streets for a cable road.[1]

The use of the overhead system of electric wires presents some different questions from the use of steam motors or cables. It involves some obstruction of the streets by the poles and wires, and the alleged interference with the working of the telephone. The poles must be set up either along the sidewalk or in the middle of the street, and the wires must be strung along, and in some places across, the street. It is strenuously objected that the placing of the poles in the soil of the street is a taking of private property, and that even if the fee of the street is in the city, it is an interference with the easement of the abutting owner and his right of access. It must be borne in mind that the question is not whether the poles interfere with public travel and thus constitute a public nuisance. This is a question to be decided by the Legislature. If the Legislature decides that the interests of public travel are subserved by having the poles in the streets, then the public have no ground for complaint. The only question now is whether the private rights of the abutter are affected; whether it is a private nuisance to him, and whether his lands are taken or his rights on the street infringed. In deciding this question it is to be remembered that the land used is a public street, and that whether the fee is in the abutting owner or in the public, the whole beneficial use of the land is in the public for the purposes of a street. For those purposes it belongs wholly to the public; and so long as it is used for those purposes, it does not belong to the individual at all.

The abutter retains only his easements of light and air and access, and these are property rights; and for the loss of these, it has been recently decided in the New York Elevated Railroad cases he is entitled to compensation.[2] It would seem to follow from this that if the use of cars for local travel, propelled by electricity, is a proper use of the street as such, then the occupation

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[1] People *v.* Newton, 112 N. Y. 396 (1889).

[2] Story *v.* N. Y. Elev. R.R. Co., 90 N. Y. 122; Lahr *v.* Metrop. Elev. R.R. Co., 104 N. Y. 268; Pond *v.* Metrop. El. R'y Co., 112 N. Y. 186; Haynes *v.* Thomas, 7 Ind. 38; Crawford *v.* Delaware, 7 Ohio St. 459; Stack *v.* East St. Louis, 85 Ill. 377; and many other cases. See also an article on the Elevated Road Litigation, by Edward A. Hibbard, 4 Harv. Law Review, 70.

of the soil for poles reasonably necessary to supply the electricity is not a taking of land belonging to the abutting owner, and that it does not interfere with his rights in the street, unless it appears that it is such a perversion of the use of the street as to affect his beneficial use of it as a street in connection with his land, and that it does in fact affect his access to his premises, or obstruct the light or air. In the elevated railroad cases it was held that the erection of a heavy iron railway upon posts in the streets was not a taking of the land, but that it did in fact affect the use of his land in connection with the street, and was an interference with the right of access and of light and air, which entitled the adjacent owner to compensation.[1] It becomes, therefore, a question of fact whether the electric railroad is a mode of using the street for the purposes for which it was designed, and whether the poles and wires really and substantially affect the use of the adjacent land and interfere with the right of access and light and air.

It would seem to be very clear that the use of electricity instead of horses to propel street cars used for the same purposes as horse cars does not change the use of the streets. The cars are of the same kind; they are used in the same way for taking people from door to door, and facilitating travel in and about the city. The use of the road corresponds exactly with the description of a horse railway in the New Jersey cases above cited, as distinguished from a steam railway, which occupies the streets for another purpose, to the exclusion of local travel. The question whether the poles and wires interfere with the use of the street as such in connection with the adjacent land is a question of fact to be determined in each case, but it cannot be said without proof that the poles and wires as ordinarily arranged would have that effect. The most serious opposition is made to those placed in the middle of the street; but however inconvenient these may be to the public, it is clear that they are less open to objection from the land-owner than those on the sidewalk, in which, by custom at least, the land-owner has more privileges, and on which he is allowed to place obstructions, such as awning-posts and hitching-posts, for his own convenience. The land itself occupied by the electric poles in the middle of the street belongs to the public for the uses of the street, and if the pole is put there for such a use, nothing belonging to

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[1] Story *v.* N. Y. El. R.R. Co., 90 N. Y. 122; Lahr *v.* Metrop. El. R'y Co., 104 N. Y. 268; Pond *v.* Metrop. El. R'y Co., 112 N. Y. 186.

the abutting owner is actually taken. Such seems to us to be the conclusion to be reached upon legal principle, and such is the conclusion of the judges in many of the cases which have recently been decided in regard to electric railways, and especially that of Vice-Chancellor Van Fleet in Halsey *v.* Rapid Transit R'y Co. above referred to.

We shall now refer briefly to the recent cases. Many of them are decisions of local and inferior courts, but some of these bear evidences of careful examination of the principles and authorities, and they are all interesting as the beginnings of the application of the principles to new conditions.

One of the earliest cases was Mount Adams and Eden Park Inclined Railway Co. *v.* Howard Winslow *et al.*,[1] in the Circuit Court of Hamilton County, Ohio, in the year 1888. In that case it appeared that poles were placed along the margin of the sidewalk about one hundred feet apart, and wires were stretched across and along the street for the purpose of supplying electricity to street cars. The court held that the sidewalk was a part of the highway, and to be dealt with as such; that the margins of sidewalks have for centuries been appropriated for placing shade-trees, lamp-posts, hitching-posts, and similar structures, and that these new poles did not, in fact, obstruct the access to the plaintiff's land and imposed no new burden upon it; that the electric current used was not dangerous; that the use of the street by the electric cars was substantially the same as that by horse cars, the mode of travel being the same, the only change being in the motive-power. The court refused to order the poles to be removed. This decision was quoted and approved by the Court of Common Pleas for Cuyahoga County, Ohio, in Pelton *v.* East Cleveland R.R. Co., January, 1889.[2] The court said that the question of speed and of danger to travellers on the street might safely be left to the municipal authorities, and that although the poles added nothing to the beauty of the street, yet the burden or obstruction created was more fancied than real, and that it could not be said in seriousness that the poles and wires would, if properly placed, obstruct the light and air or interfere with the ingress and egress to and from the plaintiff's land. An injunction was refused. This case came before the Circuit Court of the same county on appeal, and upon a supplemental

[1] 3 Ohio Circt. Ct. Rep. 425.

[2] 22 Weekly Bulletin and Ohio Law Journal, 67.

petition alleging that the running of the cars made a great deal of noise and danger, that the electric current was dangerous and not under control, and that the whole system was a public nuisance and should be abated. The court held that there was a question on the evidence whether the noise was greater than that of horse cars; but that it was different and people were not accustomed to it, and that as a mode of using the streets it was subject to regulation by the Common Council; that the danger from speed was also a matter for the Council to regulate, and, as to the electricity itself, the weight of evidence was that the current used was not very dangerous. The injunction was refused.

The first decision by the Supreme Court of a State seems to be that in Taggart *v.* The Newport St. R'y Co., already referred to.[1] This was decided January 25, 1890, and the opinion was read by Chief Justice Durfee. A bill was filed by owners of abutting land to restrain a street-railway company from erecting poles and wires in front of their houses for the purpose of carrying an electric current to propel the street cars. The poles were to be placed one hundred and twenty feet apart, and along the margin of the sidewalks. The act of incorporation of the company provided that the road might be operated "with steam, horse, or other power, as the Councils of the city might from time to time direct." The permission of the Council to use the overhead electric system had been given by ordinance. The court held that the right to use electricity might be inferred from the words of the charter, and that this was probably meant by the words "other power," in an act passed in the year 1885; that the poles did not encumber the streets, within the meaning of a clause in the charter forbidding the encumbrance of any portion of the street not occupied by the tracks; and, lastly, that street railways operated by electricity by means of poles and wires do not constitute an additional servitude upon the land. The court said it was well settled that an ordinary steam railroad does impose a new servitude, and that a horse railroad does not; that, although the distinction is often stated as a distinction between steam and horse railroads, it properly rests, not on any difference in motive-power, but on the different effects produced by them respectively on the highways and streets which they occupy. It is not the motor, but the kind of occupation, whether practically exclusive or not, which is the

[1] 19 Atl. Rep. 326.

criterion. A steam railroad comes into serious conflict with the usual modes of travel, whereas an ordinary street railway, instead of adding a new servitude, operates in furtherance of the original uses of the street. The danger from the electric current, or from the frightening of horses, does not appear to be sufficient to create a new servitude.

In answer to the suggestion that telegraph and telephone poles and wires have been held to constitute a new servitude, the court said that these are not used to facilitate the use of the street for travel and transportation, or if so, very indirectly so, "whereas the poles and wires now in question are directly ancillary to the uses of the street as such, in that they communicate the power by which the street cars are propelled;" and the Chief Justice alluded to the significant fact that telegraph lines erected by a railroad company within its right of way to increase the safety and efficiency of the railroad were held not to be a new burden, but only a legitimate development of the easement already acquired. The injunction was refused.

After this came several more decisions of inferior courts. There is an amusing one by Judge Reilly, of the Circuit Court of Wayne County, Michigan, who narrates his personal experience in driving his own horse and meeting an electric car in that very street the week before, and yet decides that the danger is not serious, and that there is no change in the mode of occupation of the street and no new servitude imposed.[1] The subject was discussed in all its aspects in a long opinion by Toney, J., of the Louisville Law and Equity Court, on June 30, 1890.[2] The court cited the late cases above referred to and quoted Cicero, but especially the opinion of the Supreme Court of Rhode Island, and decided that an injunction should not have been granted at the suit of the owner of a factory on the line of the street.

In Lonergan *v.* Lafayette Street Railway Co., decided by the Circuit Court at Lafayette, Indiana, July 9, 1890, it appeared that the statute under which the defendant company was organized provided for the incorporation of any "street or horse railroad company for the purpose of constructing street or horse railroads through the streets of the cities and towns" of Indiana. The act was entitled "An Act to provide for the incorporation of street

[1] Detroit City R'y Co. *v.* Mills, Circuit Court, Wayne Co, Mich, 1890.

[2] Louisville Bagging Manufacturing Co. *v.* The Central Passenger Railway Co.

railroad companies," and was passed in 1881. The city gave the company license in 1882 to operate their road by horse or electrical power. The court held that the Legislature must be supposed to have contemplated new discoveries and inventions, and that they must not be understood as meaning to exclude the new and useful appliances that might be invented, and that the language of the act was broad enough to cover a street railroad, whether the cars are drawn by horses or propelled by electricity. It was held also that there was no change in the use of the street, and that neither in this, nor by reason of danger and noise, was there a new servitude imposed upon the land.

The latest decision on the subject, so far as we know, is that of Vice-Chancellor Van Fleet, of New Jersey, from which we have quoted already. The case is Halsey *v.* The Rapid Transit R'y Co., Court of Chancery, N. J., Dec. 6, 1890, 20 Atl. Rep. 859, to appear in 47 N. J. Equity Reports. The company was organized under a general law, passed in 1886, "to provide for the incorporation of street railways and to regulate the same." Nothing is said in the act about the kind of motive-power to be used. This general grant was of itself sufficient, the court said, to include electric power, and the decision on this point has been quoted already. There was, however, other legislation. A statute had been passed authorizing any street railroad to use electric motors, with the consent of the city. Such consent had been given by resolution specifying the overhead system, and providing for poles either on the sides or in the middle of the street, every other pole in the middle of the street to be furnished with a group of incandescent lights. The railroad company was about to put up poles one hundred and twenty-five feet apart, in the middle of the street, in front of the complainant's tannery. The bill was filed for an injunction, and it was insisted that the resolution of the Common Council went beyond the statute in authorizing the use of poles, and that the poles occupied land belonging to the complainant and interfered with his easements in the street, for all of which he was entitled to compensation, which not being provided for, the acts of the company were unlawful.

The Vice-Chancellor held that the overhead system was included in the legislative grant; that the testimony of Thomas A. Edison and other witnesses showed that this was the best electrical system,

and the only one which as yet has proved successful, and that the poles and wires are in the present state of the art necessary to the successful operation of the defendant's railway by electricity.

They form part of the means by which a new power, to be used in the place of animal power, is to be supplied for the propulsion of street cars, and they have been placed in the street to facilitate its use as a public way, and thus add to its utility and convenience. . . . The whole matter may be summed up in a single sentence: the poles and wires have been placed in the street to aid the public in exercising their right of free passage over the street. That being so, it seems to me to be clear beyond question that the poles and wires do not impose a new burden upon the land, but must, on the contrary, be regarded both in law and reason as legitimate accessories to the use of the land for the very purposes for which it was acquired. They are to be used for the propulsion of street cars, and the right of the public to use the streets by means of street cars, without making compensation to the owners of the naked fee in the street, is now so thoroughly settled as to be no longer open to debate. It would seem, then, to be entirely certain that the occupation of the street by poles and wires takes nothing from the complainant which the law reserved to the original proprietor when the public easement was acquired.

The Vice-Chancellor cited with approval the cases above referred to in Rhode Island, Kentucky, Ohio, and Indiana, and in the Federal court, and said the question where there was a new burden

Must be determined by the use which the new method makes of the street, and not the motive-power which it employs in such use.

And this principle, he said,

Exhibits in a very clear light the reason why it has been held that telegraph and telephone poles do impose a new burden, since they are placed in the street, not to aid the public in their right of free passage, but in the transmission of intelligence; and although streets are used for this purpose in carrying the mails, yet this mode differs so essentially from their general and ordinary use, that the general current of authority, with an exception in Massachusetts, has delared that it does not come within the public easement.

The Vice-Chancellor added, that the poles in the present case served an ordinary public purpose in lighting the streets, and also that with respect to danger from the current, the proofs showed that the current employed might be used with entire safety to everybody. In answer to the contention that the poles ought not

to be placed in the middle of the street, the court said that this part of the street was especially subject to public control, and that the complainant had fewer privileges with respect to it than in the sidewalk, and that the poles were placed in a part of the street of which, so long as it was used as a street, the complainant, by virtue of his title to the fee, could not make any use whatever.

I have quoted from this opinion at some length, but the force of the Vice-Chancellor's argument cannot be fully appreciated without reading the opinion itself.

An application was made to the Supreme Court of New Jersey, before this decision was rendered, for a writ of *certiorari* to review the resolution of the Common Council of Newark, giving permission to the Rapid Transit Railway Co. and the Newark Passenger Railway Co. to set up poles and wires for the electric current; and the whole question of the right to use the streets in this way was argued, and on the part of the defendants it was contended that a *certiorari* was not the proper remedy for the protection of the private rights of the abutting owner. The court allowed the writ without deciding the main question, only remarking that the resolution (which specified the use of poles) seemed to be broader than the statute (which only said electric motors). The writ will bring the whole case before the court at the next or a subsequent term.

It is, of course, impossible to anticipate this decision, and I cannot say that there have not been decisions of which I do not know contrary to those I have cited, but the reasoning of these is based upon well-settled legal principles, and some of them at least are those of courts of general jurisdiction and of judges whose opinions are entitled to the most respectful consideration; and I think I may say that it seems probable that there will be a general agreement that the overhead electrical system may be used by legislative, even if not of municipal authority, in the operation of street railways, without giving compensation to the owners of abutting land.

(3.) The remaining question suggested for discussion was whether the disturbance of the telephone currents was a sufficient ground for injunction against the use of the more powerful current in the streets for the propulsion of the cars. It is on this ground that the railroad companies have met with the most determined opposition, but I can only refer briefly to some of the cases in which the matter has been discussed.

The conflict arises from the fact that both the telephone and the electric railway use the earth for the return current required for the use of electricity. It does not seem to be certainly known whether the disturbance is due to what is called "leakage," and takes place in the return current in the earth, or whether it is caused by induction between the parallel wires in the air. In either case the current used for the cars is stronger than that used for the telephone, and overcomes it. Whether the disturbance is caused by leakage or induction, there seems to be no doubt that it could be prevented by the use of a parallel return wire by either party; because in this case the induction would be neutralized, and the earth would be used for only one return current. The owners of the telephone say that they have set up their wires by public authority, and are using their instruments in a useful and profitable business, and insist that they should be protected from an interference with their current which will cause them serious damage. They insist that the railways might use a return wire and what is called the double trolley, and ask that they be enjoined from using the earth for their return current. The railways, in reply, ask if the complainants "want the earth" for their exclusive use, and insist that they too can use a return wire, and that by the use of the McCluer device they can do so with less expense than the railroads could do so, and that it is not a case in which the courts should interfere, but that it should be left to the development of electrical science to provide a remedy. The subject has been discussed before boards of aldermen and railroad commissioners, before a committee of the Senate of the United States, and before the courts; a great deal of testimony has been taken, and many arguments have been made. I can only allude to a few of the decisions of the courts.

In Central Union Telephone Co. *v.* The Sprague Electric R'y, etc., Co., Court of Common Pleas, Summit Co., Ohio, it was held that since it was uncertain whether the railway could use a return wire, and appeared to be probable that the telephone company might obtain relief in that way, the cost of this device would be their measure of damages, and an injunction would be refused. A similar decision was made in June, 1889, in the Chancery Court of Hamilton Co., Tennessee, and a bond in the sum of $10,000 was required of the defendant to secure the payment of the damages.

In the Rock Mountain Bell Telephone Co. *v.* The Salt Lake City Railway Co., in the District Court for the Third Judicial District of Utah, July 23, 1889, an injunction against a street railway company was denied by Zane, J., on the ground that it did not appear clearly from the affidavits that the electricity used by the railway company would injure the telephone company if the wires of both were properly insulated so as to prevent leakage, and that it could not be determined on the affidavits whether it was practicable for one or both to insulate them. The same case came before the same judge in the December term, 1889, on final hearing, and he denied the injunction on the ground that the telephone company could protect itself by the use of the McCluer system of return wires for the telephone circuit, which, although very expensive, appeared to furnish a more perfect service. He said the court would not enjoin the use of the earth by the defendant for a return current so long as the plaintiff continued to use it, especially as it did not appear to be established that it was practicable for the defendant to give it up. In Wisconsin Telephone Co. *v.* Eau Claire Electric Street Railway Co. *et al.* in the Circuit Court of Eau Claire County, Wisconsin, January 29, 1890, an injunction was denied for similar reasons. In East Tennessee Telephone Co. *v.* The Knoxville Street Railway Co., in the Chancery Court of Knox County, Tennessee, an eloquent opinion in favor of the electric railway was delivered by Chancellor Gibson, April 21, 1890. His decision was based chiefly upon the principle that the people of Knoxville, who authorized the operation of the railway, had rights superior to any telephone monopoly of the earth and the air for electrical purposes.

On the other hand, in The City and Suburban Telegraph Association *v.* The Cincinnati Inclined Plane Railway Co., in the Superior Court of Cincinnati, February 12, 1890, an injunction was granted against the railroad company, on the ground that the telephone company had acquired a right to use the streets, and had invested money on the faith of the enjoyment of the present mode of operating their franchise, and that the defendants had no right to disturb them, unless they could show that there was no other way in which they could enjoy their franchise to run an electric railway. If by using the double trolley, no matter how expensive it might be, the injury could be avoided, the defendant had no right to ask the plaintiffs to employ a new device.

The disturbance consisted, the court said, in a buzzing noise which had been so loud and continuous that communication over the telephone lines had become impossible. Telephones several miles from the city had been affected by it, and altogether more than two hundred lines had suffered from it to a greater or less degree. The cause of the trouble was described as twofold, — first, the escape of the electric fluid from the rails, which is called earth distribution or leakage, and affects the earth connection of the telephone wire; and, secondly, induction between the parallel wires of the telephone and the railway, by which the variations in the current in the latter cause variations in the current in the former. The court said it seemed from the evidence that about one half of the disturbance in the present case was due to one cause, and one half to the other, and that the result in either case was a great disturbance and a serious loss. Conceding that the injury from either cause might be wholly obviated if the telephone company should use a complete metallic circuit, so as not to use the earth and to neutralize the induction, the court held that the company was not obliged to go to the great expense which this would involve, nor even to adopt the McCluer device of using a large return wire instead of the earth in the disturbed district, unless it was shown to be impractical for the railroad company itself to use a return wire and a double trolley; and this, the judge said, was not shown, but, on the contrary, there appeared to be no serious objection to it except the expense. The defendant was using electricity in such a way as to inflict an injury upon the plaintiff in the lawful use of its telephone system, and was subject to an injunction against the nuisance.

This decision was affirmed by the General Term of the Superior Court in December, 1890,[1] Hunt, J., dissenting. The court said: —

> We take the rule to be that where a specific power is granted to do a certain thing, and that there is but one way to do it, then under the 10 Ohio St. case it cannot be considered a nuisance; but when it can be done in two ways, — one causing no injury, and the other causing injury, — then, under the 23 Ohio St. case, it would be considered a nuisance if done in the way which would cause the injury.

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[1] 24 Weekly Law Bulletin & Ohio L. J., 471. The dissenting opinion was printed in the Cincinnati Commercial Gazette, Dec. 25, 1890.

The defendant used the Sprague system, by which the earth and the rails formed the return circuit. The court asked whether there were any other system which would not cause hurt, and which could be used with equal efficacy, and said it is clear that the double trolley system with the metallic circuit would prevent the disturbance, but it is objected that it cannot be used with equal efficacy and is too expensive. To the first objection, the court answered that the double trolley had been used in Cincinnati on a double-track railroad and was practicable, and as to the second, that the court would not listen to any argument on the ground of expense when it restrains the doing of a wrong, — citing Lord Hatherly in Atty.-Gen. *v.* Colney Hatch Lunatic Asylum, L. R. 4 Ch. App. 158. In regard to the double trolley, the court quoted and distinguished the decision of Judge Brown in Cumberland Telephone & Telegraph Co. *v.* United Electric Co., in the U. S. Circuit Court for the Middle District of Tennessee, May 19, 1890,[1] and showed that the judge conceded that in double-track roads the double trolley might be made a success. In this case the decision was that if it were shown that the double trolley would obviate the injury to the complainants without exposing the defendants or the public to any large expense, it would be the duty of the defendants to adopt it; but as the proofs showed that a more effectual and less expensive remedy is open to the complainants, the telephone company ought to adopt it, and was not entitled to indemnity from the railway company.

The case was decided by Judge Brown, now one of the Justices of the Supreme Court of the United States. He said it was not denied that there was serious injury to the telephones, but that it must be borne in mind that the science of electricity is still in its experimental stage; that a device which is to-day the best, cheapest, and most practicable, may in another year be superseded by something incomparably better fitted for the purpose; and that it is quite possible that the legal obligations of the parties may change with the progress of invention, and whichever party, by the adoption of a new device, could obviate the difficulty might be obliged to do so, leaving the question of expense and damages to be settled by the courts; and we must therefore consider the case with reference to the present state of the art, and with the possibility that in another year circumstances may so

[1] 42 Fed. Rep. 273.

change as to reverse completely the obligations of the parties. After describing the various devices which might be used by the railway and the telephone to obviate the difficulty, he cited cases in regard to nuisances and the obligation to use property so as not to injure the property of a neighbor, and said: —

> The substance of all the cases we have met with in our examination of this question — and we have cited but a small fraction of them — is that where a person is making a lawful use of his own property, or of a public franchise, in such manner as to occasion injury to another, the question of his liability will depend upon the fact whether he has made use of the means which, in the progress of science and improvement, have been shown by experience to be the best; but he is not bound to experiment with recent inventions, not generally known, or to adopt expensive devices, when it lies in the power of the person injured to make use himself of an effective and inexpensive method of prevention. . . . Unless we are to hold that the telephone company has a monopoly of the earth, and of all the earth within the city of Nashville, for its feeble current, not only as against the defendants, but as against all forms of electrical energy which, in the progress of science and invention, may hereafter require its use, we do not see how this bill can be maintained.

There was also a decision in favor of the telephone company in the case of the Wichita and Suburban Railway Co., in the District Court of Sedgwick Co., Kansas, June 29, 1889.

The same question came before the Supreme Court of New York, in Albany County, in Hudson River Telephone Co. *v.* The Watervliet Turnpike & Railroad Co., on application for preliminary injunction, and Mayhem, J., granted an injunction *pendente lite* without prejudging the merits of the case, and on the plaintiffs executing a bond for $10,000. On appeal to the General Term the injunction was continued on February 24, 1890, for thirty days, and until the defendants should stipulate that the court might determine, on the final hearing, what would be the necessary expense to the plaintiffs of preventing, by metallic circuit or otherwise, the injury to, or interference with, their telephone, and what damage the plaintiffs would sustain, and should give bond to pay the damages. An appeal from this order was taken to the Court of Appeals, and on June 3, 1890, this court, through Judge Andrews, delivered an opinion, declining to entertain the appeal, on the ground that the granting of an injunction *pendente lite*

rests in the sound discretion of the court of original jurisdiction. The court said, however, —

> We have examined with care the questions involved in this case, and we are compelled to say that we entertain grave doubts whether, upon the facts stated in the complaint and affidavits, any cause of action exists in favor of the plaintiff, and whether the plaintiff has any remedy for the injury of which it complains, except through a readjustment of its methods, to meet the new condition created by the use of electricity by the defendant under the system it has adopted.

A decision on the merits was reserved until after the final hearing. All concurred except Finch and Peckham, JJ., who were in favor of a reversal of the orders. The report of the referee, Mr. Isaac Lawson, was made on August 6, 1890, and his decision was in favor of the defendants. He found as matters of fact that the plaintiffs could obviate the difficulty to some extent, but not wholly, by adopting the McCluer system; that it could obviate the difficulty entirely by making each of its circuits a metallic one; that the defendants could obviate all the damage by adopting the double trolley or the storage battery, and that this would cost less than it would cost the plaintiff to adopt the complete metallic circuit; and yet he held as a matter of law that the plaintiffs had failed to establish a cause of action against the defendants.

It appears from this review of the cases that the contest between the electric railway and the telephone companies over the use of the streets has not yet been definitely settled by the courts, and it seems likely that the settlement will be made through the ingenuity of inventors rather than by the efforts of the lawyers and judges. It is quite certain that public convenience will demand that the streets shall be used for both purposes, and that some way will be found by which this may be done. In the mean time, it is the duty of the courts to protect existing property from unnecessary injury without needlessly obstructing the application of such a valuable force as electricity to new uses for the public benefit. It is certainly true, as the courts generally have held, that no one mode of public service has the right to a monopoly of the earth or the air in the line of the streets in the use of electricity, and the power of injunction will only be exercised so as to avoid present injury to existing property until practical men have found a way for all to work together in

harmony. Whether the power will be exercised even to this extent is not yet settled, and it may be that the courts will decide that every one using this force in the public streets must exercise ingenuity to protect himself from the effect of the use of the same force for lawful ends and by lawful means, only insisting that each must use the best appliances practically available and avoid negligence and wanton injury.

With respect to this conflict with the telephone companies, and also that with the land-owners, it may safely be said, in the light of experience, that the new methods of using the streets will prevail, and that the courts may be trusted to protect the substantial property rights of individuals, even though they may not assure them against the inconveniences of living in a very busy world.

Edward Q. Keasbey.

NEWARK, N. J.